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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

JAN 30 2003

FILE: [redacted] Office: Newark Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732)

IN BEHALF OF APPLICANT: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, who certified her decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director found the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(I), 212(a)(2)(A)(i)(II), and 212(a)(2)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), 1182(a)(2)(A)(i)(II), and 1182(a)(2)(B). The district director, therefore, concluded that the applicant was ineligible for adjustment of status and denied the application.

The applicant has provided no statement or additional evidence on notice of certification.

Section 212(a)(2) of the Act, 8 U.S.C. 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).
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> (B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for

which the aggregate sentences to confinement were 5 years or more is inadmissible.

(C) Any alien who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any such controlled substance or is or has been a knowing assister, abettor, conspirator, or colluder with others in the illicit trafficking in any such controlled substance, is inadmissible.

The record reflects the following:

1. On February 14, 1986, in the Superior Court of New Jersey, Hudson County, [redacted] the applicant was indicted for Count 1, burglary while armed (NJS 2C:18-2); Count 2, aggravated assault (NJS 2C:12-1(b)2); Count 3, aggravated assault (NJS 2C:12-1(b)3); Count 4, possession of a weapon for unlawful purpose (NJS 2C:39-4(d)); and Count 5, unlawful possession of a weapon (NJS 2C:39-5(d)). On May 28, 1986, the applicant entered a plea of guilty to Count 1. The court adjudged him guilty as to Count 1, and sentenced him to imprisonment for a term of 3 years. Counts 2, 3, 4, and 5 were dismissed.

2. On July 28, 1987, in the Superior Court of New Jersey, Hudson County, [redacted] the applicant was indicted for Count 1, possession of a controlled dangerous substance (cocaine) (NJS 2C:35-10a(1)); and Count 2, possession of a controlled dangerous substance with intent to distribute (cocaine) (NJS 2C:35-5a(1)). On February 23, 1988, the applicant was convicted of Count 2, and he was ordered to pay the total of $1080 in penalty and costs. Count 1 was dismissed.

3. On May 2, 1996, in the New Jersey Superior Court, Law Division-Criminal, [redacted] the applicant was indicted for Count 1, possession of a controlled dangerous substance (NJS 2C:35.10a); Count 2, possession of a controlled dangerous substance with intent to distribute (NJS 2C:35.5a.5b); and Count 3, possession of a controlled dangerous substance with intent to distribute within 1000 feet from school (NJS 2C:35.7). On October 22, 1996, the applicant was convicted of Count 3, and he was sentenced to imprisonment for a period of 5 years with a two and one half year parole ineligibility period. Sentence to run concurrent with sentences imposed on Acc. 735.96 (paragraph 4 below) and [redacted] (the court record for this indictment is not contained in the record of proceeding although the district director noted that the applicant was requested on June 21, 2001 to submit court dispositions of all his arrests).

4. On October 22, 1996, in the New Jersey Superior Court, Law Division-Criminal, Acc. No. 735-96, the applicant was convicted of possession of a controlled dangerous substance with intent to

distribute within 1000 feet from school (NJS 2C:35.7). He was sentenced to imprisonment for a term of 5 years with a two and one half year parole ineligibility period. Sentence to run concurrent with sentence imposed on [redacted] (paragraph 3 above) and [redacted]

Burglary (of a dwelling/structure with intent to commit a crime therein while armed with a deadly weapon) is a crime involving moral turpitude (paragraph 1 above). Matter of Garcia-Garrocho, 19 I&N Dec. 423 (BIA 1986). The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act based on his conviction of a crime involving moral turpitude.

The applicant is also inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on his convictions of possession of a controlled dangerous substance with intent to distribute (traffic) cocaine (paragraphs 2, 3, and 4 above). There is no waiver available to an alien found inadmissible under these sections except for a single offense of simple possession of thirty grams or less of marijuana. The applicant does not qualify under this exception.

Additionally, the applicant is inadmissible to the United States pursuant to section 212(a)(2)(B) of the Act based on his convictions of 2 or more offenses for which the aggregate sentences to confinement actually imposed were 5 years or more.

The applicant is ineligible for adjustment of status to permanent residence pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.